RECENT EDITORIALS

Our view on the housing crisis: Give strapped homeowners a break in bankruptcy court

You can get a workout plan for cars and yachts; why not mortgages?

USA Today - Editorial

March 4, 2008

With the nation's housing crisis getting worse and some 2 million American homeowners facing the loss of their homes, Congress and the Bush administration are scrambling for ways to slow the tide of foreclosures. Some proposals involve spending billions of taxpayer dollars to buy foreclosed homes or otherwise help hard-pressed homeowners.

Here's a better idea that could cost taxpayers next to nothing: Change the bankruptcy law.

As the law stands, a bankruptcy judge can work out payment plans for credit card accounts, cars, yachts and loans for vacation homes and family farms. In fact, the only debt the judge can't modify is the mortgage on a debtor's primary home. If that means the debtor loses the house, too bad.

Removing the special status for mortgages could save about 600,000 homeowners from losing their homes, say the idea's supporters, who fell short in a Senate vote last week but plan to try again. If the change worked, the broader economy would benefit from fewer foreclosures, which drive down home values, batter communities and spread collateral damage to people who never made or received a subprime mortgage loan.

This is no free ride.

Bankruptcy is a tough process carrying a stigma that lasts for years and requires debtors to keep paying down what they owe. Only certain existing mortgages would be eligible, and a bankruptcy judge would have to certify that a homeowner had no alternative except foreclosure. One provision would allow a lender to recapture some or all the increase in value if the home were sold.

Even so, mortgage lenders strongly oppose the change. They argue that exposing lenders to the uncertainties of bankruptcy court would cause everyone's rates to go up by perhaps 1.5 percentage points.

That's what they say. But there's little hard evidence it would happen.

In fact, a recent study, by a law professor at Georgetown and an economics doctoral candidate at Columbia, found virtually no difference between the rates lenders charged for mortgages that could be modified by bankruptcy courts and those that could not. (The study looked at the differences between current mortgage rates for first and second homes, and rates during a period in the 1980s and 1990s when some states allowed primary mortgages to be modified by bankruptcy courts, a practice ended by the U.S. Supreme Court in 1993.)

In all likelihood, if the bankruptcy law were changed, lenders would tighten standards and employ more risk-based pricing, rather than raise interest rates for all borrowers.

It's no small matter to change a contract after the fact. But that's what bankruptcy courts do every day, and stripping away primary mortgages' special status would merely make them equal to other debt.

It would be better for everyone if troubled mortgages never ended up in bankruptcy court at all. Lenders could forestall that in many cases by voluntarily working out new terms with hard-pressed borrowers. That's happening, but slowly.

Adding the hammer of bankruptcy court would create an incentive for more lenders to do that more urgently — and would provide a reasonable last chance for qualified homeowners when lenders don't act.

The Arizona Republic

Obama offering bold solutions to mortgage mess

Editorial

Feb. 23, 2009

President Barack Obama's mortgage-rescue plan aims directly at the source of the nation's economic sinkhole.

With Wall Street bailouts showing little success, it's Main Street's turn. The twin villains of the housing market - falling home values and rising foreclosure rates - are grimly familiar to Arizona, so it was fitting that Obama came to Mesa to unveil his plan.

Efforts to slow foreclosures and short sales will benefit individual homeowners, stabilize neighborhoods and, eventually, help Arizona's growth-related industries.

But it is worth noting that the biggest applause lines in Obama's speech at Dobson High School were about the president's determination "not to rescue the unscrupulous or irresponsible."

Americans, whose sense of fairness runs deep, understand that people who take chances deserve to suffer any unpleasant consequences of their choices. Yet there are people - lots of them - who played by the rules and still wound up in mortgage hell. The reversal of their misfortune will benefit the economy. The plan is designed to overcome the problems of the Hope for Homeowners program that was enacted in July. That program was supposed to help 400,000 homeowners, but was so restrictive very few benefited, according to *Congressional Quarterly*.

Obama's $75 billion plan removes restrictions that prevent Fannie Mae and Freddie Mac from guaranteeing loans for mortgages valued at more than 80 percent of a home's value. That rule prevents families from refinancing at historically low interest rates if they owed more than their homes are worth. Obama also says he will announce uniform rules for the mortgage industry to help homeowners restructure subprime loans. Lenders who want federal assistance will have to agree to the rules. Lenders will agree to lower interest rates and the feds will make up part of the gap between the old and new payments.

The president wants Congress to approve a change in bankruptcy rules that would allow judges to reduce home mortgages to fair-market value. The mortgage industry says this would further destabilize the market.

Yet Bankruptcy Courts routinely do this with other assets, and it could cut foreclosure rates by 20 percent, according to the National Association of Consumer Bankruptcy Attorneys. It's worth a debate. Obama is offering bold ideas to address a big problem. So far, so good. Now Americans await the details to judge whether this is the answer to the foreclosure crisis. As he irons out those details, Obama would be wise to consult with Arizona Sens. John McCain and Jon Kyl, who are well versed on a problem engulfing this state.

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Chattanooga Times Free Press

The Obama foreclosure plan

Editorial
Friday, February 20, 2009

More than 2 million families lost their homes to foreclosure over the past two years while the Bush administration negligently watched from the sidelines as the housing market spiraled downward. If nothing were done to break this self-reinforcing cycle, another 2.3 million homeowners this year alone will suffer foreclosure. This bleak scenario by itself well justifies the plan President Barack Obama unveiled Wednesday to address the foreclosure crisis.

One part of the plan would pump $75 billion into mortgage adjustment incentives for banks from the already-approved TARP bailout funds. A second part of the plan will allow Freddie Mac and Fannie Mae, the government's mortgage corporations, enough flexibility in mortgage underwriting guidelines to refinance up to another $200 billion worth of troubled mortgages for qualified homeowners.

The nation's housing and foreclosure crisis clearly warrant the Obama plan. Larger circumstances, as well, make the plan necessary and welcome.

Waves of foreclosures have not only poisoned the housing market and blighted many developments. They also have become central factors in dragging down local economies, and the nation's overall economic strength.

Like a contagion that fuels an epidemic, the foreclosure cycle and accompanying decline in housing and equity values overall has eroded the sense of economic well-being and assumed financial worth of homeowners generally, regardless of how sound and secure the jobs and mortgages may be of people not remotely threatened by foreclosure.

These larger losses, both attitudinal and on paper, work against the economy broadly by restraining the normal consumer spending on which our broad economy depends for 70 percent of economic activity. The chain-cycle of layoffs and soaring unemployment costs resulting from such constrained consumer spending is literally accelerating the downward spiral, leading in turn to even more layoffs and further depressed levels of spending.

Breaking this vicious cycle may be the most important economic priority — and stimulus plan — that the Obama administration can undertake. In this sense, as with the congressional stimulus plan, the mistake may be to err on the side of doing too little, not too much. It is yet unknowable if the Obama plan is too little, but it certainly is not too much.

At the moment it is more robust than any previously mentioned plan. The $75 billion in incentives that it opens to lenders to encourage them to modify mortgage loans to stem foreclosure is 50 percent higher than FDIC chairwoman Sheila Bair suggested last year. President Obama apparently can establish this incentive by executive order, as it will derive from second half of the $700 billion bailout fund initiated by former President Bush to stabilize the banking system.

The Obama plan also includes a stick to go with this carrot to prompt recalcitrant banks to adjust unaffordable loans for homeowners who qualify for such aid under the attached guidelines. That stick is the administration's support for bankruptcy reforms which would allow bankruptcy judges to modify mortgage loans over a bank's objections — a move long opposed by banks.

Inaction by banks to stem foreclosures the past two years demonstrate how necessary that cram-down provision has become, however. Banks have been all too willing to allow foreclosures, even if they end up taking losses that loan modifications would have avoided. In doing so, they have stymied a large portion of the lending that the TARP funds were meant to lubricate. Mr. Obama should hold firm on the bankruptcy reform.

Allowing Freddie Mac and Fannie Mae more leeway in underwriting troubled mortgages is necessary, as well. The deeper the housing market has sunken, the more homeowners have found themselves “under water” on their mortgages. When their equity exceeds the marked-down value of their homes, they’re more apt to walk away from their houses if they run into financial trouble.

The plan’s refinancing standards clearly won’t help all people trapped in newly unaffordable mortgages. The screening standards aren’t recklessly loose. But they would help people with some equity and a good chance of repaying an adjusted mortgage loan.

Overall, the plan will help millions of homeowners, and it should go a long way toward stabilizing home values and bank stability. That can’t happen too soon.

Austin American-Statesman

EDITORIAL

Housing rescue will benefit economy

Prudent borrowers might not like seeing the government picking up the slack for foolish homebuyers in over their heads.

Monday, February 23, 2009

A lot of Americans will oppose President Barack Obama's $275 billion plan to stem the tide of foreclosures. Their anger is justified, for way too many people took out home loans they couldn't afford — and way too many lenders gave them those loans and looked the other way.

For those who have worked hard, kept up their house payments and bought less house than a lender told them they could get a loan for, it is aggravating to see the government try to rescue those who borrowed to the hilt to buy homes they couldn't really afford.

But as tempting as it may be to let those borrowers lose their homes and lenders to fail, their sheer numbers are dragging down the entire economy. Until the housing mess is cleaned up, it will be harder to get credit, find another job and see the value of retirement savings start to recover — or at least stop falling in value.

Besides, not everyone the government seeks to help is a deadbeat. Many homebuyers could make the payments until they lost a job. Others who were financially naïve were exploited by a greedy lender.

Under the Obama plan, the government will spend $75 billion to modify the loans of borrowers who are in foreclosure or close to it. The government and a lender would each contribute financially to lower a troubled borrower's monthly payment to 31 percent of his or her income.

The other part would put $200 billion more toward the Fannie Mae and Freddie Mac programs to provide more credit for home mortgages — that would make it easier for many, including those who are up to date on their mortgages, to refinance at lower interest rates.

The program won't help everyone. It will not help, for example, those who bought homes only as investors, expecting to "flip" them to another buyer at a higher price. Nor will it help many, perhaps millions, who are so far "underwater" — owing far more on their home than it is worth — that there's no practical way to refinance.

Implementing the plan won't be easy. Just the administrative task of working through millions of individual mortgage agreements is "a jobs program in itself," said John Heasley, general counsel of the Texas Bankers Association.

One of the Obama administration's most important proposals is to give bankruptcy judges much more power to reduce monthly payments for homeowners in their courts.

The lending industry has strongly opposed the "cramdown" authority, arguing that it would mean higher risk in making mortgages and, therefore, higher mortgage interest rates — for everyone.

But that works both ways: Lenders who know that their investment could be reduced in bankruptcy court are a lot more likely to ensure the credit-worthiness of borrowers on the front end, reducing the risk of foreclosure and bankruptcy in the first place.

The Obama administration's plan to start cleaning up the housing mess might only partially resolve the problem. But that's more than we've seen to date, and any progress would be welcome.

The St. Louis Post-Dispatch
Keep hammer in anti-foreclosure plan
Feb. 19, 2009
By: Editorial Board

President Barack Obama's plan for preventing foreclosures and helping to stabilize the housing market is serious in scope and imaginative in approach — as far as it goes.

The plan, announced Wednesday in Mesa, Ariz., needs a hammer to force an unrepentant banking industry to make deals that protect communities and keep deserving families in their homes.

Millions of homeowners have seen their monthly mortgage payments rise to between 40 percent and 50 percent of their income, often because they signed adjustable-rate loans they could not afford. The president's plan seeks to reduce their payments to not more than 38 percent — and perhaps as little as 31 percent — of gross monthly income. He's doing this by appealing to mortgage holders' self interest:
If they give a little, they will get a lot.

Some mortgage lenders, for example, would reduce their risk of loss on loans if they refinance loans at lower rates. Other lenders would become eligible for government payments and other cash incentives if they make significant concessions in interest rates.

The idea is to reduce monthly payments enough to make them affordable, thus keeping families in their homes and keeping a glut of foreclosed homes from destroying communities and wrecking home values.

And, by the way, lenders could avoid the cost of foreclosure, which generally costs more than working out a loan.

Among those who work with distressed homeowners to prevent foreclosures, there's consensus that the president's program represents a drastic improvement in the government's response to what's become a genuine crisis.

But the plan suffers from obvious limitations. It does not directly force the mortgage industry's bottom feeders off the sidelines, pushing them to make concessions on loans with predatory terms rather than pursue foreclosures.

Rather, the incentives focus more on mainstream loans and don't touch billions of dollars in "toxic" subprime mortgages bundled and sold by Wall Street as mortgage-backed securities.

This represents a huge hole in the president's plan, one that he proposes to fill by offering consumers relief under federal bankruptcy law. Lenders who won't work out loans could find a federal bankruptcy judge doing it for them.

Dan Claggett, managing attorney of Legal Services of Eastern Missouri's consumer unit, sees foreclosure cases involving sharp practices on the part of lenders — unsophisticated borrowers "promised one thing and receiving something else altogether."
Mortgage holders on such loans typically are defiant in foreclosure proceedings, and existing law provides little leverage to force them to make a raw deal reasonable.

Nationally, legal advocates for home- owners have been turning to bankruptcy courts to get relief for mortgage-strapped clients. Indeed, Legal Services in St. Louis recently received a $250,000 grant to beef up its bankruptcy practice as an anti-foreclosure tool. But it has to work around the edges, with credit card and other consumer debt, because under current law, judges don't have the power to directly modify mortgages on primary residences.

Under Mr. Obama's plan, bankruptcy judges would get such power — erasing an exemption the home mortgage industry won with its enormous lobbying influence over Congress. The plan is unpopular with home mortgage holders because it would treat them like other secured creditors — no better, no worse.

The home lending industry is happier with the financial part of the presidents' program — $75 billion in direct incentives to lenders and another estimated $200 billion for purchasing or guaranteeing mortgages (mainly through Fannie Mae and Freddie Mac) — because it would impose only modest burdens.

The real fight is yet to come. Lenders will fight a change in the bankruptcy law tooth and nail. If Congress kowtows, it would doom thousands of deserving homeowners to foreclosures that could have been prevented.

Congress' loyalties will be clearly on display. Americans should watch closely.

The New York Times
February 19, 2009
Editorial

Mr. Obama's Foreclosure Plan

The anti-foreclosure plan announced by President Obama on Wednesday is a decisive break from the Bush administration's disastrous protect-the-banks-but-not-the-homeowners policy. The president has promised that it will help as many as nine million American families refinance their mortgages or avoid foreclosure. That's a good start, but given the dire state of the economy, we fear it still may not be enough.

For two years, while house prices cratered and mortgage defaults soared, the Bush administration stubbornly refused to compel the mortgage industry to clean up the bad loans that had been made so recklessly; it even refused to give banks any incentives to do so. Some two million families lost their homes to foreclosure.

The Obama plan will provide up to $75 billion, mostly from the bank bailout fund, to help lenders and borrowers come to new terms. That could allow up to four million at-risk homeowners stay in their homes.

Most of the money will go for incentive payments to encourage lenders to modify troubled loans and for subsidizing lower interest rates to reduce borrowers' monthly payments. (After five years, the interest rate will begin to gradually adjust upward again.)

Equally important, Mr. Obama is coupling the incentives to bankers with a big stick — support for a change in the law that would allow bankrupt homeowners who cannot come to new affordable terms with a lender to have their mortgages modified under court protection. Mr. Bush stubbornly opposed that idea, too.

The plan will also provide help for homeowners who may be struggling, but not delinquent, making it easier for them to refinance their loans to lower rates. Loans that are owned or backed by Fannie Mae and Freddie Mac — about half of all mortgages — will be eligible for refinancing even for homeowners who have less than 20 percent equity in their homes.

That will allow up to an estimated five million homeowners to trade their current mortgages for loans with lower rates, making repayments easier and possibly heading off future defaults.

The truly worrisome part of the Obama plan is that it does not forcefully address the fact that some 13.6 million homeowners — and counting — are stuck in mortgages that have balances that are higher than the value of their properties.

Reducing the interest rates on the loans may make their mortgages affordable — for now. But if a family has a setback, like unemployment or illness, even the new lower payment may prove too onerous. Without an equity cushion to fall back on, default and foreclosure may be impossible to avoid. Similarly, if the family has a big expense — for a new roof or new plumbing — it would not make sense to plow more money into a home in which they have no equity. In those circumstances, declaring bankruptcy may be a homeowner's only option.

Mr. Obama must fight for bankruptcy reform legislation that is expansive enough to accommodate borrowers who cannot make payments for reasons beyond their control. It will be a tough fight. The mortgage industry — which has carefully cultivated friends on both sides of the political aisle — will press for a bill that makes it as difficult as possible for borrowers to seek bankruptcy protection. Mr. Obama must not back down.

The Los Angeles Times

Editorial

Real estate reality

Government and the financial sector must do more to stem the rising tide of foreclosures.

January 26, 2009

As lawmakers look for a way out of the recession, it's worth remembering how we got into this mess in the first place. The collapse of the housing market sucked trillions of dollars worth of real estate wealth out of the economy, starting a vicious cycle of cutbacks by consumers, lenders and businesses. But the collapse wasn't a one-time event. It's an ongoing process that could take a larger human and economic toll this year than it did in 2008, when the number of troubled homeowners nearly doubled from the year before. According to RealtyTrac, lenders made foreclosure filings on 2.3 million properties last year (more than half a million in California alone), including nearly 2% of all housing units. New laws here and in several other states reduced the pace of foreclosure filings, but they haven't helped homeowners pay their bills. As a consequence, the FDIC projects another near-doubling of housing misery, with 4.4 million mortgages falling 60 to 90 days past due by the end of 2009.

It's no coincidence that more banks are sliding toward insolvency as defaults mount. The financial industry placed a huge bet on Americans paying their mortgages, along with an intricate web of side bets on the U.S. housing market. Keeping more homeowners out of foreclosure could help end the sickening slide in home values, solidifying the ground under the financial industry and coaxing more buyers back into the housing market. It's not as simple as that, of course; rising unemployment has become a major factor in the market, driving more homeowners into default with no hope of recovery. Still, if lenders don't do more for those whose homes could be saved, the situation will only get worse.

Some argue that government should let the market take its course. More banks are modifying loans for buyers who can afford somewhat reduced monthly payments, and repossessing homes from buyers who shouldn't have received loans at all. Foreclosure, they say, is a fitting resolution for such people and the lenders that encouraged them. We agree that rescuing people and businesses from their own risk-taking poses a significant moral hazard. That's why we believe that policymakers shouldn't try to shield borrowers or banks from drastically lower property values and lost returns. But government can and should help them adapt to the collapsing market. Given the links between the wave of foreclosures and the overall health of the economy, everyone fares better when lenders and homeowners can strike deals that cost less and preserve more of a home's value than a foreclosure sale would.

Finding the right way to help borrowers, however, is a tricky business. Congress' biggest initiative, the Hope for Homeowners program, was supposed to refinance 400,000 defaulting loans into government-guaranteed mortgages over three years. In its first three months, it received only 412 applications and provided a grand total of 17 loans. The near-complete disinterest in the program stems from the restrictions and fees that Congress imposed to limit the cost to taxpayers -- a penny-wise, pound-foolish strategy. Meanwhile, lenders' early efforts to help borrowers fared poorly, with a high percentage defaulting again on their mortgages. But more recent efforts, such as the FDIC's handling of defaulting IndyMac Bank loans and Fannie Mae's modification of loans bought from investors, show that 60% or more of the borrowers in trouble can be rescued with the right set of terms.

Those successes and failures help draw the outlines of the right response to the foreclosure problem. Lenders need to follow the lead of the FDIC, Bank of America and JPMorgan Chase in setting affordability formulas that enable them to reevaluate borrowers and modify mortgages on a mass scale. As shown in a recent study by Alan M. White, a Valparaiso University law professor, the first round of modifications frequently failed because they didn't reduce monthly payments and often provided only temporary help. The changes need to yield mortgages that buyers can afford over the long term, giving them more reason to keep paying.

The government can help on this front by providing financial incentives for loan servicing companies and reducing barriers to modifications. In particular, servicers should have more freedom to modify the loans owned by investor groups, which held 61% of the long-overdue mortgages at the end of December. Any modification should be fair game if it would yield more for investors than a foreclosure sale. (That's a fairly low bar; by White's estimate, the average foreclosure in November resulted in a 55% loss for the lender.) A trade group for mortgage-security investors agreed in 2007 to provide such flexibility for subprime loans, but the mortgage crisis has already advanced deep into other borrowing categories. Congress could also encourage modifications by letting bankruptcy judges rework home mortgages, rather than forcing bankrupt homeowners to sell.

One other factor that needs to be addressed is a borrower's incentive to abandon a home when the value falls below the amount owed. The problem is exacerbated by the popularity of loans that required little or no down payment, which generated a class of buyers with no equity stake in their homes. Some economists have suggested that taxpayers should cover the gap between a homeowner's debt and the current value of the house, but we're not comfortable with that idea at this point because it would rescue lenders from their careless practices. We'd rather see Congress fix the Hope for Homeowners program, which encouraged lenders to write down enough debt to restore a borrower's stake in the home.

Even with an aggressive effort to avert foreclosures, millions of people are likely to lose their homes because they just can't afford them in this recession. That's all the more reason to try harder to help the ones who can be helped.

Government also should focus on homeowners

Milwaukee Journal Sentinel - Editorial

Posted: Jan. 31, 2009

Wall Street's infection can be traced to the one afflicting mortgages, which back many of the assets now at risk at the nation's largest banks. As the government nurses the big banks back to health, it also must treat this disease.

Foreclosures are hollowing out neighborhoods and putting more downward pressure on home prices. Foreclosures jumped 77% in Milwaukee County last year - two-thirds of them on the north and northwest sides of the city. Foreclosure filings nationally were up 81% and now account for a large percentage of all sales of existing homes.

The Federal Reserve put in place one important treatment last week. It said it would consider relaxing mortgage terms on loans it holds. There are local efforts under way to deal with the effects of foreclosed homes on city neighborhoods. The City of Milwaukee received about $9 million in federal money last year for this purpose and is seeking more.

But other steps are needed. Congress should allow federal bankruptcy judges to modify home mortgages. This simple, equitable change would place an independent arbiter in charge of the decision. Congress also should adopt a plan championed by Federal Deposit Insurance Corp.

FDIC President Sheila Bair has urged the government to earmark a portion of the remaining $700 billion in bank bailout funds to finance loan modifications for troubled borrowers. Yes, but safeguards are needed: Owners of vacation homes or obvious speculators shouldn't get help. Assistance makes sense for other homeowners who have the ability to meet lower payments.

The nation's biggest banks must be brought back to health. But the financial system, both top and bottom, requires urgent and systemic care. We are encouraged that President Barack Obama backs aid for deserving homeowners. Working to reduce foreclosures is one important part of that regimen.

Austin American-Statesman

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